LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
http://www.in.gov/legislative

FISCAL IMPACT STATEMENT

LS 6911 | **NOTE PREPARED:** Feb 24, 2012
BILL NUMBER: SB 344 | **BILL AMENDED:** Feb 23, 2012

SUBJECT: State Taxation.

FIRST AUTHOR: Sen. Hershman | **BILL STATUS:** CR Adopted - 2nd House
FIRST SPONSOR: Rep. Espich

FUNDS AFFECTED: X **GENERAL** | **IMPACT:** State & Local
X **DEDICATED**
FEDERAL

Summary of Legislation: (Amended) *Outdoor Signs:* The bill specifies the assessed value for outdoor signs for the 2011 through 2012 assessment dates.

Capital Projects Fund Levy: The bill changes the formula for adjusting the maximum permissible capital projects fund levy. It repeals an obsolete adjustment formula.

Residential Historic Rehabilitation Grant Program: The bill permits the fiscal body of a city or town, or the county, in the case of an unincorporated area, to authorize the unit's redevelopment commission to establish a residential historic rehabilitation grant program.

Sales Tax Exemption: The bill provides a sales tax exemption for sales of wrapping material and empty containers that are acquired for shipping or delivering certain tangible personal property.

Utility Receipts Tax: The bill exempts from the utility receipts tax any payments of severance damages or other compensation resulting from a change in assigned service area boundaries between electricity suppliers.

Sales Tax Refunds: The bill specifies that industrial processors and those engaged in floriculture and arboriculture do not have to file a sales tax refund claim if the utility service is separately metered, or it has been determined that the utility service is predominantly used in industrial processing, horticulture, or arboriculture.

Tax Procedures: The bill changes numerous tax filing and reporting requirements. The bill also removes the prohibition of taking a case to the tax court if the Department of State Revenue takes longer than three years to settle a claim.

Tax Credit Extensions: The bill extends the income tax credits for venture capital investments, Hoosier business investments, alternative fuel manufacturing, and new employers through December 31, 2016.

Internal Revenue Code: Corrects references to the Internal Revenue Code in the income tax law.

Miami County COIT: The bill authorizes Miami County to adopt an ordinance changing the means by which it provides property tax relief through an additional county option income tax rate.

Abatement Notice: Provides for a continuous abatement notice regarding weeds and vegetation.

Alcoholic Beverage Excise Tax Credit: The bill provides an alcoholic beverage excise tax credit for certain liquor or wine excise taxes paid in duplicate.

Cable TV Franchise Fee: The bill terminates the state video franchise fee on January 1, 2013. It also allows local units to replace the state franchise fee with a local fee of not more than 3% that must apply to both cable and satellite service.

Ports of Indiana: The bill specifies that facilities leased from the Ports of Indiana may not become exempt because of the lease. It provides that unpaid property taxes on a facility leased from the Ports of Indiana are a liability of the lessee and are not a liability of the Ports of Indiana or a subsequent tenant or occupant of the leased facility. It requires a county treasurer to provide written notice to the Ports of Indiana within 30 days of any determination that a person liable for property taxes due on a facility leased from the Ports of Indiana or the site of the leased facility has failed to pay the property taxes.

Anderson Certified Technology Park: The bill allows an adjustment to the sales tax base period amount or the income tax base period amount for the certified technology park in Madison County.

Property Tax Exemptions: The bill permits a nonprofit organization serving the homeless to file a late property tax exemption application to receive exemptions for the 2008 and 2009 assessment dates.

Interim Studies: The bill assigns various topics to interim study committees.

Maximum Permissible Rates - Rate Controlled Funds: The bill changes the calculation that adjusts tax rate caps each year to negate the effects of reassessments and annual adjustments on the tax levy.

Effective Date: (Amended) March 1, 2011 (retroactive); January 1, 2012 (retroactive); Upon Passage; May 1, 2012; July 1, 2012; January 1, 2013; July 1, 2013.

Explanation of State Expenditures: *Outdoor Signs*: This bill would require the Commission on State Tax and Financing Policy to study the assessment of outdoor signs during the 2012 interim.

(Revised) *Department of State Revenue (DOR):* The bill contains various tax procedure provisions for the DOR.

(1) The bill changes the requirement for estates and trusts to file income tax returns from any estate or trust with gross income from sources in Indiana to estates and trusts with gross income of $600 or more from sources in Indiana.

(2) The bill increases the income tax withholding threshold for an employer to pay withholdings to the DOR on an annual basis instead of a monthly basis. The bill increases the threshold from a monthly average during the prior year of $10 to a monthly average of $1,000. The bill also eliminates the 3-month and 6-month reporting periods for employers with small withholdings.

(3) The bill requires all entities that withhold income taxes to file the withholding report and remit withholding taxes electronically. Currently, only entities that registered to withhold after December 31, 2009, must report and remit electronically.

(4) The bill requires any person filing more than 25 copies of the forms listed below after December 31, 2012, to file the forms electronically:

- Form W-2G (certain gambling winnings);
- Form 1099-R (distributions from pensions, annuities, retirement or profit sharing plans, IRAs, insurance contracts, or like distributions);
-Form WH-18 (miscellaneous withholding tax statements for nonresidents).

(5) The bill eliminates the prohibition for the Tax Court to hear a refund appeal that is filed more than three years after the date the claim for refund was filed with the DOR.

(6) The bill requires the DOR to annually verify whether the capital expenditures made by a taxpayer who received the alcoholic beverage excise tax credit comply with the requirements set forth in the bill.

(Revised) *FSSA:* The bill requires FSSA to study the following before December 31, 2012:

(1) The tax relief available for Indiana residents with incomes under the federal poverty income level.
(2) The availability of programs that provide financial or medical assistance to low income Indiana residents with incomes under the federal poverty income level.
(3) The maximum government assistance income an individual could receive by pursuing and obtaining the benefits described in subdivisions (1) and (2).

The bill requires FSSA to submit a report of its its findings not later than December 31, 2012, to the Governor and the Legislative Council. The report must include a detailed explanation of the calculation assumptions and methodology.

FSSA estimates that they would spend $50,000 - $60,000 for a contractor to research and prepare this report.

Commission on State Tax and Financing Policy (CSTFP): The bill requires the CSTFP to conduct a study of all income tax credits during the 2012 and 2013 legislative interims. The study is to be conducted with half the credits studied during each year and in the order they were enacted. The bill requires the CSTFP to prepare a report that covers each credit and that includes the following:

(1) A review of the original scope and purpose of the credit and whether the scope or purpose has changed since the credit's enactment.
(2) The economic parameters of the credit, including the credit percentage and credit limits, and whether these parameters have changed since the credit's enactment.
(3) A description of the taxpayers that qualify for the credit and how effective the credit has been in assisting these targeted taxpayers.
(4) The type of activities on which the credit is based and how effective the credit has been in promoting these targeted activities.
(5) The amount of the credits granted over time.
(6) A determination of the dollar amount of credits granted but not taken that can be carried forward.
(7) A summary of audit findings for each credit and whether there has been any misuse of the credit.
(8) Suggested changes in the law with regard to each credit, including whether the credit should be retained or not.
(9) Any other issues related to these income tax credits, as determined by the CSTFP.

The bill requires the CSTFP to issue the report in two parts, in an electronic format, and to the Legislative Council, not later than November 1, 2012, and November 1, 2013, respectively.

Explanation of State Revenues: *Sales Tax Exemption for Sales of Wrapping Material:* This bill provides a sales tax exemption for sales of wrapping material and empty containers that are acquired for shipping or delivering tangible personal property that is owned by another person, is processed or serviced for the owner, and will be sold by that owner either in the same form or as a part of other tangible personal property produced by that owner in the owner's business of manufacturing, assembling, constructing, refining, or processing. This provision would decrease sale tax revenue by an indeterminable amount.

Tax Credit Extensions: The bill makes the following sunset date extensions. The potential additional credits that could potentially be claimed and the potential fiscal impact from these credit extensions is indeterminable.

(1) The bill extends the sunset date on the venture capital investment credit by two years, from December 31, 2014, to December 31, 2016. This would allow two additional years for the IEDC to award credits under this provision. Current statute limits the credits awarded by IEDC to $12.5 M per year. From 2007 to 2009, annual credits claimed by individual and corporate taxpayers averaged about $3.2 M, with the 2009 total coming in below the average at about $2.5 M. The credit is equal to 20% of annual qualified venture capital investment up to $1 M.

(2) The bill extends the sunset date on the Hoosier business investment (HBI) tax credit by three years, from December 31, 2013, to December 31, 2016. This would allow three additional years for the IEDC to award credits under this provision. From 2007 to 2009, annual credits claimed by individual and corporate taxpayers averaged about $6.7 M, with the 2009 total coming in below the average at about $5.6 M. The credit is equal to 10% of the qualified investment made by the taxpayer.

(3) The bill extends the sunset date on the alternative fuel vehicle manufacturing investment credit by 4 years, from December 31, 2012, to December 31, 2016. This would allow 4 additional years for the IEDC to award credits under this provision. The potential additional revenue loss due to the extension of this credit is indeterminable. In tax year 2009, only 7 individual taxpayers claimed the alternative fuel vehicle manufacturing investment credit, and no corporate taxpayers claimed the credit. The credits claimed in 2009 totaled $6,285. The credit is equal to 15% of qualified investment made before 2012 to manufacture and assemble alternative

fuel vehicles.

(4) The bill extends the sunset date on the new employer credit by 4 years, from December 31, 2012, to December 31, 2016. This would allow 4 additional years for the IEDC to award credits under this provision. The potential additional revenue loss due to the extension of this credit is indeterminable. The IEDC indicates that while they do receive inquiries about the credit, they have not received any applications for the credit. The credit is equal to 10% of wages paid by a new Indiana business to new qualified employees during the first 24 months of employment, and applies to new businesses starting in 2010, 2011, or 2012, that employ at least 10 new qualified employees.

(Revised) *Alcoholic Beverage Excise Tax Credit*: This bill provides an alcoholic beverage excise tax credit for liquor or wine excise taxes paid in duplicate as a result of excise taxes being imposed both at the time the taxed goods are received and when the same goods are withdrawn from a storage facility. This bill allows a taxpayer, who has exceeded the statutory time limit to file a refund claim for the duplicate taxes paid, to be granted a refund of approximately $7 M under the conditions specified in the bill.

This bill would allow approximately $800,000 in tax credits to be claimed each fiscal year over a period of approximately ten years. The first fiscal year impacted would be FY 2013. The bill provides that the tax credit may be taken monthly but may not exceed 5% of the monthly excise tax liability. The bill provides that the credit must be used for capital expenditures to expand employment or assist in retaining employment in Indiana.

The alcoholic beverage excise taxes are distributed in varying amounts to the following funds: state General Fund, the Post War Construction Fund, the Enforcement and Administration Fund, the Addiction Services Fund, and the Wine Grape Market Development Fund. The state retains 50% of the General Fund distribution of beer and wine excise tax revenue. The remainder is distributed to cities and towns based on population.

(Revised) *Anderson Certified Technology Park (CTP):* The bill could potentially result in an indeterminable revenue loss to the state. The revenue loss could occur if the Department of State Revenue recalculates the base period sales and/or income tax amounts for the Anderson CTP (called the Flagship Enterprise Center) to a lower level than is currently being used. Lowering the existing base period amounts would increase the incremental revenue amounts (the difference between current revenue collections and the base period amounts) that the CTP could capture. The additional incremental revenue resulting from the lowered base period amounts would be revenue that would otherwise flow to the state.

The bill authorizes the redevelopment commission in Anderson to petition the DOR to adjust the Anderson CTP's sales tax base period amount and/or income tax base period amount. The bill provides that the recalculation by DOR is retroactive to the later of: (1) the date the incorrect base period amounts became effective; or (2) July 1st of the state fiscal year immediately preceding the state fiscal year in which the petition was submitted by the redevelopment commission. The potential revenue impact from the recalculation is indeterminable and would depend on: (1) the determination of the DOR relative to the petition of the local redevelopment commission, (2) the recalculated base period amounts; and (3) future growth in tax collections in the CTP.

Delco-Remy was located in the Anderson CTP when it was designated by the IEDC in 2004.The Anderson CTP captured incremental tax revenue from FY 2004 to FY 2007. However, Delco-Remy relocated from the Anderson CTP to the former Guide Corporation headquarters in Pendleton in February 2008. Consequently, the Anderson CTP's base period amounts exceeded the actual revenue collections in the CTP until FY 2011. This meant that the CTP did not have incremental Sales Tax, state Income Tax, or local option income tax revenue to capture from FY 2008 to FY 2010. However, income tax growth in the CTP was sufficient to allow the CTP to capture state and local income tax in FY 2011. The Anderson CTP now claims that their base period amount calculations were incorrect and set at too high a level.

The revenue capture amounts by year of capture for the Anderson CTP are reported in the table below. (Note: The revenue capture amounts reported in the table were distributed to the Anderson CTP in the fiscal year following the year of capture.)

	Incremental Revenue Captured by the Anderson CTP			
Fiscal Year of Capture	**Sales Tax**	**State Income Tax**	**Local Option Income Tax**	**Total**
2004	$23,074	$16,443	$13,109	$52,626
2005	390,536	161,197	47,411	599,144
2006	20,115	238,563	70,165	328,843
2007	130,482	274,785	101,024	506,291
2008-2010	0	0	0	0
2011	0	125,785	46,245	172,030
Total	**$564,207**	**$816,773**	**$277,954**	**$1,658,934**

Explanation of Local Expenditures: *Abatement Notice*: Under current law, a county or municipality may require property owners to cut and remove weeds and other rank vegetation. Violation notices must be sent by certified mail. This provision would permit the county or municipality to post a notice of continuous abatement at the property after the initial violation notice is sent by certified mail. This provision would reduce the cost of posting violation notices for properties that are in continuous violation.

Explanation of Local Revenues: (Revised) *Residential Historic Rehabilitation Grant Program*: This bill would create the Residential Historic Rehabilitation Grant Program. Counties, cities, and towns could adopt an ordinance establishing the program. A county program would pertain to the unincorporated portion of the county.

An adopting unit would also establish a residential historic rehabilitation grant fund. Grants from the fund would be available only for the qualified expenditures of a taxpayer that qualifies for a residential historic rehabilitation income tax credit. The adopting unit's fiscal body would have to appropriate money in the fund to be used as grants. The fund consists of money appropriated by the fiscal body for deposit in the fund from any revenue source available to the fiscal body.

(Revised) *Outdoor Signs*: Prior to the 2011 Pay 2012 assessment year, outdoor advertising signs were assessed under a DLGF rule that set the value of each sign based on the type, size, and number of faces on the sign. The DLGF repealed that rule effective with the March 1, 2011, assessment date.

Outdoor advertising signs are now valued in the same manner as most other depreciable personal property by listing the cost of the signs in the depreciation schedule in the personal property tax return. The cost to purchase an existing outdoor sign can vary greatly depending on location. In many cases the value under the current method is higher than under the previous rule.

This bill would establish a valuation schedule that would be used for taxes payable from CY 2012 and CY 2013. The new schedule would set the unit value per structure based on the type and size, but not the number of faces, of each sign. This value would be used in lieu of the value arrived at by using the depreciation schedule in the personal property tax return.

For purposes of this analysis, it was assumed that there is an average of 1.5 faces on outdoor advertising signs in Indiana. In comparing the estimated assessed value for signs under this proposal with the estimated value under the previous rule, the values for single-pole signs would be about 136% higher, on average, with a range of 85% to 268%.

For taxes payable in 2011 (under the previous rule), $7.7 M in assessed value was reported statewide by taxpayers who self-reported their principal business activity as display advertising. The tax due is estimated at $195,000. For taxes payable in 2012 (without a rule or schedule), $22.2 M in assessed value was reported and the estimated tax due is $602,000. So, with no special rule in place, the tax due is estimated to be 209% higher than it was under the old rule.

The total AV and taxes attributable to outdoor advertising signs are not known. The property tax returns for the taxpayers identified above may also contain property other than outdoor advertising signs, so the above estimates for these taxpayers may be high. However, the full universe of outdoor advertising signs is not known. If a sign owner listed any other activity as their principal business activity, then the value of their signs would not be included in the estimates above. It is very likely that there are many outdoor advertising signs that are reported on property tax returns other than those identified here.

The valuation schedule contained in this bill would most likely result in a total sign valuation that is about 25% lower than the AV under current law (without a rule or schedule), but 135% greater than the AV under the pre-2012 schedule. The change in valuation by taxpayer and location would vary. Compared with current law, lower overall assessments would cause property tax rates to rise and could result in an increase of circuit breaker losses for local civil taxing units and school corporations.

(Revised) *Video Service Franchise Fees*: This bill provides that the state and local video service franchise fees are not to be imposed with respect to video service provided after December 31, 2012. The cable service franchise fee varies by local government unit, but the maximum franchise fee allowed under current statute is 5%. Currently, there is no franchise fee assessed on satellite providers. This bill allows local units to adopt an ordinance to impose a fee of not more than 3% on the gross revenue of cable and satellite providers providing service to subscribers located in the unit. The fee could first be effective January 1, 2013.

The impact on local revenue would be dependent on local action. There is insufficient data available to determine whether the imposition of a 3% rate on satellite providers would offset the decrease in rate on cable providers in the individual taxing units and would be dependent on the distribution of customers within the units.

According to data available in the Local Government Database, 356 taxing units have budgeted about $20.4 M in revenue from the cable service franchise fee in CY 2011.The franchise fee is paid quarterly, within 45 days after the end of each calendar quarter. So, under current law the third quarter of 2013 fee is payable by

November 15, 2013, and the fourth quarter fee is payable in February 2014.

(Revised) *Maximum Permissible Rates - Rate Controlled Funds:* Under current law, the maximum tax rate for a rate- controlled fund, such as a cumulative fund, is adjusted each year to negate the effects of assessed value (AV) increases due to general reassessments or annual adjustments. When AV increases for these reasons, the rate is reduced so that the rate will produce the same tax amount on the same property. Sometimes, however, the current formula produces a reduced rate when AV is declining.

Beginning with taxes payable in CY 2013, the calculation would be changed so that there would be no change in the tax rate when AV declines. Additionally, in the calculation of the 2013 maximum tax rate, the 2012 tax rate that is used as a base would be recalculated under the new formula. The recalculation of the 2012 rate in this case would not restore any levy amounts lost in 2012 but it would eliminate any tax rate reduction that was experienced in 2012 from the calculations going forward.

In the case of a unit with declining AV, this provision would result in an increase in property tax levies for rate-controlled funds as compared to current law. However, the levies would not be any higher than, and would probably still be lower than, the 2011 levies for these funds.

The DLGF has certified 2012 property tax rates in 50 counties to date. According to the DLGF, taxing units in these 50 counties have lost a total of approximately $12 M in 2012 because of the lower tax rates produced by the current formula. Under this provision, levies in 2013 and later years would increase by a portion of the $12 M. The full statewide impact is not yet known.

(Revised) *Miami County COIT*: Currently, Miami County imposes a 1% LOIT to provide funding for local property tax credits. In 2012, the certified distribution of these funds totals $4,389,846. Of the total LOIT money, the county uses 30% for homestead credits, 20% for residential credits (including both homestead and nonhomestead property), and 50% for property tax credits that go to all real and personal property.

Counties may change the allocation of LOIT proceeds by ordinance under current law. Any change must be made by December 31st to be effective for tax credits offered in the following year. This provision would permit Miami County to adopt an ordinance in 2012 to change the allocation beginning with property tax credits offered in 2012.

A change in the allocation of credits will change net tax liabilities for property taxpayers and will impact circuit breaker losses for local units and school corporations. Under this bill an allocation change in Miami County would take effect one year earlier than it would under current law. The actual impact is dependent on actions taken by Miami County.

Property Tax Exemptions: Under this bill, a nonprofit corporation may, by June 30, 2012, file for an exemption for taxes payable in 2009 and 2010 if:

The property served as a homeless shelter in 2008 and 2009;
The corporation received an exemption for taxes payable in 2008, 2011, and 2012.
The corporation failed to timely file an exemption application for taxes payable in 2009 and 2010; and
The property would have otherwise been eligible for an exemption for taxes payable in 2009 and 2010;

One property in Vigo County has been identified as meeting these criteria. However, additional unknown properties could also qualify. The total property tax liability for both years was $3,096.68. Under the bill, this amount would be refunded to the nonprofit corporation. Property tax refunds reduce current year property tax revenue for the taxing units that provide services to the property.

State Agencies Affected: Commission on State Tax and Financing Policy; Department of State Revenue; Family and Social Services Administration.

Local Agencies Affected: County auditors; Counties; Cities; Towns; Townships; Other civil taxing units and school corporations; Miami County; Taxing units that serve the affected exempt properties.

Information Sources: LSA property tax databases; Local Government Database, DLGF, LSA income tax databases, 2007-2009; Dawn Hetzel, FSSA, 317-234-1380.

Fiscal Analyst: Bob Sigalow, 317-232-9859; Jim Landers, 317-232-9869; Diana Agidi, 317-232-9867; Kathy Norris, 317-234-1360.